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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PLATINUM GYMNASTICS,

Plaintiff and Respondent,

v.

TRAMPOLINES UNLIMITED,
INC.,

Defendant and Appellant.

2d Civil No. B290774
(Super. Ct. No. 56-2014-
00460320-CU-FR-VTA)
(Ventura County)

Appellant Trampolines Unlimited, Inc. (TUI) and respondent Platinum Gymnastics (Platinum) entered arbitration over a contract dispute. After the arbitrator found in favor of TUI, Platinum petitioned to vacate the award on the grounds that the contract was illegal and therefore unenforceable. The trial court granted the petition. TUI appeals the order vacating the arbitration award. We affirm.

FACTS AND PROCEDURAL HISTORY

TUI is a manufacturer of trampolines and trampoline parks. TUI entered into a “Memorandum of Understanding”

(MOU) and later a contract (collectively agreements) to build a custom trampoline park in a gym owned by Platinum. The agreements described the services TUI would provide, including the design, construction, and installation of the trampoline equipment. The agreements included a statement acknowledging that TUI was not a licensed contractor. The agreements also provided that any dispute arising out the contract would be submitted to binding arbitration.

TUI built and installed the trampoline park in Platinum's gym. Platinum paid \$145,000, but stopped payments after the installation was completed. The remaining balance was \$35,124. Platinum sued TUI alleging various causes of action, including breach of contract. TUI petitioned to compel arbitration, and the trial court granted the petition.

Before arbitration, Platinum moved to dismiss the arbitration on the grounds that the contract was illegal pursuant to Business and Professions Code¹ section 7031 because TUI was an unlicensed contractor. In opposition, TUI argued section 7031 did not apply because it met an exemption under section 7045 for sellers and installers of "finished products" that did not become a "fixed part of the structure." (§ 7045.) The trial court denied the motion, finding that the issue of whether the section 7045 exemption applied was an issue for the arbitrator. The court noted that Platinum "will be able to raise issues under [a petition to vacate] if necessary after arbitration."

After a two-day hearing, the arbitrator ruled in favor of TUI and awarded it \$35,124 in damages plus \$97,753.55 in costs and fees. The arbitrator noted that the "key issue is

¹ Further unspecified statutory references are to the Business and Professions Code.

whether [a contractor's] license is required to perform the installation of the equipment.” The arbitrator found that (1) the services TUI provided did not require a contractor's license, and (2) the equipment installation did not become a “fixed part of the structure” and therefore met the section 7045 exemption.

Platinum petitioned to vacate the arbitration award pursuant to Code of Civil Procedure section 1286.2 on the ground that the arbitrator exceeded his authority by deciding that section 7031 did not apply and awarding TUI compensation. Platinum submitted evidence that the Contractors State License Board (CSLB) issued a citation against TUI for contracting and advertising its services without a license. Platinum argued that the arbitration award conflicted with CSLB's finding that TUI needed a license for the work it performed for Platinum.

The trial court granted the petition to vacate the arbitration award and ordered a de novo hearing to decide the licensing issue and the applicability of section 7031 to this case.

DISCUSSION

TUI contends the trial court erred when it vacated the arbitration award and ordered a de novo review of the evidence. We disagree because the trial court, and not the arbitrator, must decide the applicability of section 7031 and the legality of the contract. (*Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 34 (*Ahdout*); see *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 609 (*Loving*); *Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 893 (*Lindenstadt*).)

Generally a trial court may not interfere with an arbitration award even if the arbitrator made an error in law or fact. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10-11 (*Moncharsh*).) There are, however, limited exceptions in which a

trial court must vacate an arbitration award, including when “[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.” (Code Civ. Proc., § 1286.2, subd. (a)(4).) We review de novo the trial court’s determination whether an arbitrator exceeded their power and whether an arbitration award should have been vacated on those grounds. (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916 (*Richey*).)

An arbitrator exceeds their power when they issue an award that “contravenes an explicit legislative expression of public policy.” (*Richey, supra*, 60 Cal.4th at p. 916.) Here, Platinum alleged the arbitrator exceeded his power because the award contravened the legislative public policy expressed in section 7031. This section prohibits an unlicensed contractor from filing an action to collect compensation for any services performed, and allows a party who hired an unlicensed contractor to recover any compensation paid, even if the party knew the contractor was unlicensed. (§ 7031; *Ahdout, supra*, 213 Cal.App.4th at p. 30.)

Ahdout, supra, 213 Cal.App.4th 21, is directly on point. There, the Court of Appeal held that because section 7031 constitutes an explicit legislative expression of public policy, the trial court was “vested with the final word on whether the provision applies” and the arbitrator’s findings on the issue are given no deference. (*Id.* at p. 39.) *Ahdout*, a real estate developer, sought disgorgement of construction costs pursuant to section 7031 because the defendant (BIDI) was an unlicensed general contractor. (*Id.* at p. 26.) The arbitrator rejected the argument, finding that section 7031 did not apply because BIDI did not engage in work “typically done by general contractors.”

(*Id.* at p. 28.) The trial court denied a petition to vacate the award on the basis that it lacked the power to review the arbitrator’s decision for errors of fact or law. (*Id.* at p. 29.)

The Court of Appeal reversed and remanded to the trial court to hold a de novo review of the evidence. (*Ahdout, supra*, 213 Cal.App.4th at pp. 38-39.) The court reasoned that where a public policy is articulated explicitly by the Legislature, “the general prohibition of judicial review of arbitration awards does not apply.” (*Id.* at p. 38.) The court observed that the purpose of the Contractor’s State License Law (§ 7000 et seq. (CSLL)) is to protect the public from incompetent and dishonest construction services, and section 7031 advances this purpose by discouraging those who do not comply with the CSLL from providing their services. (*Ahdout*, at p. 38.) In light of these legislative aims, the court held that “judicial review of arbitration awards that allegedly fail to enforce section 7031 is appropriate.” (*Id.* at p. 39.) The court stated that on remand, the arbitrator’s findings that BIDI did not function as a general contractor on the project was not binding, and the trial court could consider “‘all of the admissible evidence . . . regardless of whether that evidence was before the arbitrator.’ [Citation.]” (*Id.* at pp. 39-40.)

Here, the trial court did not err in vacating the arbitration award. As in *Ahdout*, Platinum makes the argument that the award contravenes section 7031 because TUI was an unlicensed contractor when it rendered its services. (*Ahdout, supra*, 213 Cal.App.4th at p. 26.) The determination of whether section 7031 applies in this case is a decision that the trial court must decide de novo. (*Id.* at pp. 39-40.)

Moreover, judicial review of the arbitration award was appropriate here because the legality of the entire contract

was in question. (*Moncharsh, supra*, 3 Cal.4th at p. 32; *Loving, supra*, 33 Cal.2d at p. 609; *Lindenstadt, supra*, 55 Cal.App.4th at p. 890.) The general rules prohibiting judicial review of arbitration awards do not apply “where the issue of illegality of the entire transaction is raised” in a petition to vacate or confirm the arbitration award. (*Loving*, at p. 609; *Lindenstadt*, at pp. 888-889.) This is so because “the power of the arbitrator to determine the rights of the parties is dependent upon the existence of a valid contract under which such rights might arise. [Citations.] In the absence of a valid contract no such rights can arise and no power can be conferred upon the arbitrator to determine such nonexistent rights.” (*Loving*, at p. 610.) An arbitrator therefore would exceed their power, if they were to enforce an award based on an invalid contract. (*Ibid.*)

In *Lindenstadt, supra*, 55 Cal.App.4th 882, the Court of Appeal held that the trial court must decide the legality of an entire contract. There, *Lindenstadt* had an agreement with Staff Builders to help find home health care businesses for Staff Builders to acquire. (*Id.* at p. 885.) *Lindenstadt* sued Staff Builders for finder’s fees for several businesses it found, but Staff Builders argued that *Lindenstadt* could not recover fees because it was an unlicensed real estate broker on these transactions. (*Id.* at p. 886.) The arbitrator decided in favor of *Lindenstadt*, finding that it did not act as a broker. (*Id.* at p. 887.) In opposition to a petition to confirm the award, Staff Builders alleged the agreement was illegal under real estate licensing law and the trial court must decide the legality of the agreement. (*Id.* at p. 888.) The Court of Appeal agreed, reasoning that because the trial court is the “tribunal which must determine such issue of illegality upon the evidence presented to it’ [citation], . . .

Lindenstadt ‘cannot be permitted to rely upon the arbitrator’s conclusion of legality.’ [Citation.]” (*Id.* at p. 892.) It would “violate public policy to allow a party to do through arbitration what it cannot do through litigation.’ [Citation.]” (*Id.* at pp. 892-893.)

Like in *Lindenstadt*, the trial court properly vacated the arbitration award here because the legality of the entire contract is in dispute. The contract between TUI and Platinum was for the construction and installation of the trampoline park. Thus, if TUI required a license to perform its services for Platinum, “the arbitrator exceeded [his] powers [citation] to the extent [he] awarded compensation for that work.” (*Lindenstadt*, *supra*, 55 Cal.App.4th at p. 893.)

TUI does not distinguish *Ahdout*, *Loving*, and *Lindenstadt*. Instead, TUI relies upon the arbitrator’s finding that it did not need a license. TUI also attempts to argue the issue of licensing on the merits. But the trial court must decide the issue of whether TUI required licensing de novo. The arbitrator’s findings are given no deference. (*Ahdout*, *supra*, 213 Cal.App.4th at p. 39.)²

Platinum makes the alternative argument that the award must be vacated because the arbitrator “substantially prejudiced” Platinum’s right by refusing to accept evidence that it

² TUI also mentions the trial court had previously ruled that the arbitrator should decide whether the section 7045 exemption should apply. To the extent TUI relies on that previous ruling, that order has not been appealed. Moreover, the trial court expressly allowed for Platinum to raise the issue anew in a petition to vacate. We will therefore not consider that prior ruling.

presented. In light of our decision, we need not address this argument.

DISPOSITION

The order is affirmed. Platinum shall recover costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Vincent J. O'Neill, Jr., Judge
Superior Court County of Ventura

McCarthy & Kroes, R. Chris Kroes and Linda Elias-
Wheelock, for Defendant and Appellant.

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